

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7089 OF 1999

Atmaram Sawlaram Sawant Petitioner
V/s.
The State of Maharashtra & Another Respondents

Mr.S.M. Dharap with Mrs.Anjali Helekar for the
Petitioner.

Mr.V.A. Sonpal, AGP for the Respondents.

CORAM : F.I. REBELLO &
R.M. SAVANT, JJ.
DATED : 4TH APRIL, 2007.

ORAL ORDER : (PER R.M. SAVANT, J.)

1. By this Petition filed under Article 226 of the Constitution of India, the Petitioner impugns the judgment and order dated 23.3.1999, passed by the Maharashtra Administrative Tribunal in Original Application No.194 of 1993. In the said Application the main relief was that of claiming pension from 15.6.1974 from which date the Petitioner has resigned.

2. The factual matrix involved lies in an narrow campus is stated thus :-

. The Petitioner joined the services of

Respondent No.2 as a clerk on 17.8.1948. The Petitioner's date of birth is 26.12.1930. The Petitioner was promoted on 9.10.1962 as a Superintendent and thereafter was posted as Investigator. It appears that in the year 1973, when the Petitioner was deputed to Mathadi Board for one year as Personal Officer, the Petitioner found some discrepancies and defalcations which he pointed out to his Higher Authorities in the Board. Since no cognizance of his report was taken by the Higher Authorities, he lost interest in the job and in disgust, as a mark of protest, tendered his resignation on 7.6.1974 which was accepted by the office on 16.6.1974. It is the case of the Petitioner that he had put in sincere, honest and efficient service and that he was also awarded President's medal in 1961. Since there was no voluntary retirement scheme, the Petitioner had to resign and he was therefore deprived of gratuity and pension.

3. The Petitioner some time in 1987 made a representation to the State Government through the General Administrative Department for granting pension to him, as according to the Petitioner similarly situated persons were directed to be granted pension by Courts of law. In reply to the Petitioner's

representation, he was informed by the concerned Department of the State Government that in accordance with the provisions of Maharashtra Civil Services (Pension) Rules, 1982, retirement benefits are admissible only to those Government servants who have retired and since the Petitioner has resigned, he is not entitled to any retirement benefits. The Petitioner thereafter made representations to the Industries Department of the Government of Maharashtra who informed the Petitioner that in the light of the provisions of Section 66 of the Maharashtra Civil Services (Pension) Rules, 1982, his request for grant of pension could not be considered. Thereafter the Petitioner also made a representation on 1.1.1991 to the then Hon'ble Chief Minister of Maharashtra. Having received no reply to the same, the Petitioner approached the Maharashtra Administrative Tribunal by way of Original Application No.194 of 1993. The Tribunal by the impugned order dated 23.3.1999 held that the Petitioner does not qualify for grant of pension under the Bombay Civil Services Rule, 1959. The Tribunal was of the view that 1982 Pension Rules would not be applicable to the Petitioner. It is the said judgment of the Tribunal which is impugned in the present Petition.

4. On behalf of the Respondents, an affidavit has been filed by one S.G. Phadtare, Deputy Director of Industrial Safety and Health, Mumbai. In paragraph of the said affidavit it is stated that the Petitioner is not entitled to pensionary benefits, as the Petitioner had tendered his resignation before completing 30 years of qualifying service or before attaining 50 years of age. The stand of the State Government is therefore that the Petitioner is not eligible for grant of pension either under Bombay Civil Services Rule, 1959 or the Maharashtra Civil Services (Pension) Rules, 1982.

5. We have heard Mr.S.M. Dharap, the learned counsel for the Petitioner and Mr.V.A. Sonpal, the learned AGP. On behalf of the Petitioner, it was contended that the Petitioner had resigned on account of frustration in view of the fact that the report regarding discrepancies and defalcations were not taken cognizance of by the Higher Authorities. The learned counsel for the Petitioner submitted that the Petitioner had in all put in 26 years of service from the year 1948 to the year 1974 and therefore, the same should be taken into consideration by the Respondents in considering the Petitioner's claim for pension. The learned counsel for the Petitioner invited our

attention to Bombay Civil Services (Pension) Rules and Rule 185 thereof which reads as under :-

"R.185. In any case in which a pension is not admissible under any specific provision of these rules, Government may sanction the grant of a pension, which shall not, save in the most exceptional circumstances, exceed Rs.40 a month, or of a gratuity not exceeding the equivalent, calculated in accordance with the table prescribed under Rule 320-A, of the value of such a pension, if the grant is not inconsistent with the general spirit of these rules.

. The learned counsel for the Petitioner further drew our attention to Rule 254 of the said Rules. It was the submission of the learned counsel for the Petitioner based on Rule 185 that the said provision is an exception under which the Government is empowered to sanction the pension, under the said rule if the pension is otherwise not admissible. The extent of pension that can be granted is mentioned in the said rule itself.

6. The learned counsel for the Petitioner further submitted that the Petitioner would be eligible for the pension on the application of Rule 254(2)(a). It was the submission of the learned counsel for the Petitioner that since the Petitioner has put in total 26 years of service, the Petitioner would be entitled to pension under Rule(a) of the said Rules. It was further submitted that though the said rule is applicable only to the cases where the persons are to retire on account of inefficiency, the Petitioner having tendered his resignation, stands on a higher footing than a person contemplated under the said Rule, the benefit of the said rule therefore ought to be given to the Petitioner. The learned counsel for the Petitioner also drew our attention to Rule 3(a) of 1959 Rules under which the Government has a power to grant relaxation if the opportunity of any rule results in hardship being caused in any particular case. Relying upon the said Rule 3(a), it is then submitted by the learned counsel for the Petitioner that the Government should interfere in this particular case and grant pension to the Petitioner.

7. On behalf of the Respondents Mr.V.A. Sonpal, the learned AGP justified the order of the MAT by

contending that 1982 Rules could not be applicable to the Petitioner in view of the fact that the Petitioner had resigned on 15.6.1974. The learned AGP further submitted that the Petitioner is not entitled to pension under 1959 Rules and that the reliance of the Petitioner on rule 254 was misplaced as the said rule operates only in those cases where the person is asked to retire on the ground of inefficiency. The Petitioner having resigned, therefore would not be entitled to benefits of pension under the said rule.

8. We have bestowed our anxious consideration to the submissions of the learned counsel for the respective parties. Instant case is a peculiar case wherein the employee has resigned on account of his disgust as according to him, no action was taken by the higher authorities in respect of the complaint made by him for discrepancies and defalcations in the Mathadi Board. It is to be borne in mind that the Petitioner has rendered 26 years of unblemished service. There was no forfeiture at the time when the Petitioner resigned and therefore, the entire service of 26 years can be taken into consideration.

9. Though the 1982 Rules would not be applicable to the Petitioner and though we are of the view that

the Petitioner would not be entitled to pension under rule 254(2)(a) and (b) as the said rule is specifically applicable to the persons who are made to retire on account of inefficiency, we are of the view that in the instant case since the pension is not admissible to the Petitioner under any specific provision of the said 1959 Rules, the State Government can grant pension under Rule 185 to the extent mentioned in the said Rule as indicated above. This is not a case where the Petitioner had left the organization under cloud but has voluntarily resigned on account of the reasons mentioned earlier in this order. Petitioner was also awarded President's medal. At the time of accepting the resignation the authority considering the 26 years of service put in by the Petitioner should have drawn his attention to the fact that he would lose his pensionary benefits instead of immediately accepting his resignation. Rule 3(a) of the Rules confers a power on the State Government to relax any rule if the same is causing any hardship to any employee. Therefore the Government is sufficiently vested with the power to consider an individual case on its own merits even if Rule 3 (a) be not strictly applicable. In the instant case as indicated above, we are of the view that the Petitioner would be entitled to pension under Rule 185

which is an exception to other pension rules under which the Government can sanction grant of pension where the pension is not otherwise admissible.

10. In that view of the matter, we allow the Petition and direct the State Government to sanction the pension to the Petitioner under Rule 185 to the extent mentioned therein and as applicable today from the day the Petitioner's resignation was accepted and pay him all arrears of pension.

11. Rule is accordingly made absolute to the aforesaid extent. The parties to bear their own cost.

(R.M. SAVANT, J.)

(F.I. REBELLO, J.)